

810-6-1-.112 Signs.

(1) Signs are to be considered subject to tax on the full sales price when such signs are standard, prefabricated by the seller or his supplier and delivered as a complete unit to the point where set up.

(2) When the signs are custom built into a building or otherwise affixed to real property, they come within the building materials provision with the tax being due from the person who erects the sign to his supplier on the cost of materials used to construct the sign, in which case no tax would be due from the person installing the sign on his service in attaching the materials to the building and/or real property. The same rule will apply when a builder constructs an outdoor advertising sign that will become affixed to real property from the ground up using lumber, nails, sheetmetal, etc.

(3) In the instances whereby the sign company subcontracts the installation or subcontracts a portion of the construction of the sign, taxation of the materials will be as described above in paragraph (2), with tax being due on the cost of the materials used by the contractor and/or subcontractor that builds the custom-made signs.

(4) In recent court decisions in this State, the courts have held that the contractor provision provided in Section 40-23-1(a)(10) applies if the following criteria are met: (i) the taxpayer must be a contractor; (ii) the materials must be building materials; and (iii) the materials must become a part of the real estate. See *Department of Revenue v. James A. Head & Co.*, 306 So.2d 5 (Ala. Civ. App.1974), cert. denied 306 So.2d 12 (1975).

(5) It has also been determined that the taxpayer was a contractor even though actual installation was performed by a third party:

(a) "...the 'contractor' provision also applied to those materials provided by the taxpayer but installed by the electrical contractors, citing *Montgomery Woodworks* ("The court holding in *Montgomery Woodworks* illustrates, however that actual installation by the taxpayer is not required." *Hunter Security at 5.*) *Hunter Security, Inc. v. State of Alabama*, Docket S. 05-1309.

(b) "Therefore, the failure of the taxpayer to actually install the cabinets after they have been fabricated does not prevent the taxpayer from being a 'contractor' within the meaning of §40-23-1(a)(10)." *State of Alabama v. Montgomery Woodworks, Inc.*, 389 So.2d 512 (Ala. Civ. App. 1980)

(6) In some instances the sign dealer will be in a dual business, both selling and building signs. When both parts of the business are substantial rather than incidental, the dealer should be set up to purchase all material at wholesale, tax free, and pay tax directly to the Department of Revenue on sales and withdrawals. See Rule 810-6-1-.56, Dual Business. See, also, 810-6-1-.29, Building Materials Manufactured by Contractors.

(7) The providing of billboard advertising is a service; and, the receipts therefrom are not subject to sales tax. The provider of billboard advertising services must pay sales or use tax on purchases of supplies, materials, and equipment used in the operation of the business.

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Code of Alabama 1975

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